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Amy Pelletier

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7/5/2011

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants	: Fanger	Confirmation No.:	3611
Serial No.	: 10/664,575	Art Unit	: 3755
Filed	: 9/17/2003	Examiner	: Waggle, Jr. Larry
Title	: Drill Guide With Alignment Feature	Patent No.	: 7,935,123

Mail Stop Patent Ext.
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. 1.705(d) AFTER PATENT ISSUANCE**

Dear Sir:

Responsive to the Determination of Patent Term Adjustment indicated on the front page of US Patent US 7,935,123 (issued 5/3/2011), the Patentee submits this Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705(d). As stated in 37 C.F.R. 1.705(d):

any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued...

This request is being submitted within two months of the issuance of the US Patent 7,935,123, and, thus, Patentee considers this request to be timely.

1. Payment of fee under §1.18(e) or §1.18(f)

Patentee hereby requests the fee for this petition be waived due to the nature of the error, as described below. However, if the USPTO disagrees, Patentee authorizes the USPTO to charge the fee set forth in §1.18(e) or §1.18(f) or and any other fees that may be due to Deposit Account 10-0750.

2. Statement of Facts

On August 17, 2010, Patentee filed a Patent Term Adjustment Petition to address several issues regarding A, B and C delay. On March 31, 2011, the USPTO granted Applicants Petition in part. The USPTO agreed with Patentee's calculation of 330 days of Patent Term Adjustment regarding A and C delay. The Patent Office dismissed Patentees argument regarding B delay as premature because the patent had not granted at the time the petition was filed.

Although the petition was granted and the USPTO agreed with Patentee's calculation of the patent term adjustment of 330 days for A & C delay, the patent did not grant with the correct patent term adjustment. A copy of the Decision on Application for Patent Term Adjustment Petition Adjustment is attached.

The arguments made in the original petition and Patentee's current arguments relating to B delay are set forth below.

2A "A Delay" Calculation

Applicants disagree with the USPTO's determination of the "A delay" term adjustment. The errors in the USPTO "A delay" are set forth below. Applicant considers the "A delay" patent term adjustment to be 307 days, 157 days less than indicated by PAIR.

31 Days of Term Reduction

Applicant's Notice of Appeal filed on 3/20/2007 was 31 days late. The Patent Office did not deduct 31 days for the late response. The Final Rejection was mailed on 11/17/2006. An amendment after final was filed on 1/16/2007 however this amendment was not entered by the examiner. Instead an advisory action was issued on 2/20/2007. A Notice of Appeal was filed 3/20/2007. Since the three month deadline to respond to the Final Rejection was 2/17/2007 and the Notice of Appeal was filed 3/20/2007, 31 days should have been deducted for a late reply.

79 Days Term Reduction

Two supplemental replies were filed after an RCE was filed on 2/16/2010. A supplemental declaration was filed on 3/17/2010 and an IDS was filed on 5/6/2010. Since both of these items were filed after the filing of the RCE, a reduction should have been applied by the USPTO. The supplemental declaration was filed 29 days after the RCE and the IDS was filed 79 days after the RCE. Since the time frame for the delay of the supplemental declaration and submission of the IDS overlap, 79 days should have been for late submission of the IDS, since the IDS was filed AFTER the supplemental declaration was filed.

47 Days Term Reduction

Applicant was credited with 47 days that Applicant was not entitled to. Applicant originally filed a response on 1/16/2007 to a final rejection issued on 11/17/2006. The response was not entered by the examiner. An advisory action was issued and Applicant then filed a notice of appeal on 3/20/2007. The patent office issued a non-final office action on 7/2/2007 and credited the Applicant with 47 days for the Patent Office's delay in issuing the office action within 4 months of Applicant's reply of 1/16/2007. Since the initial response filed on 1/16/2007 was not entered by the examiner and the patent office issued the office action within 4 months of the filing date of the notice of appeal on 3/20/2007, there was no patent office delay by issuing the office action mailed 7/2/2007, as the office action was mailed within 4 months of the filing of the notice of appeal.

137 Day Credit

In addition, the USPTO was 137 days late in issuing the granted patent. It appears that the USPTO has properly added these 137 days to the patent term adjustment.

2B "B Delay" Calculation

Patentee disagrees with the USPTO's "B delay" calculation of 721 days resulting from the application pending longer than three years. Since the application did not issue within three years from the filing date (9/17/2003), Applicants are entitled to a "B delay" adjustment starting the day after the filing date (9/18/2006) to the filing of the first RCE on 6/2/2009. Patentee's B delay

calculation includes exclusions for the time periods of 3/20/2007 (filing of notice of appeal) to 4/11/2007 (prosecution reopened) and from 3/27/2008 (filing of second notice of appeal) to 9/4/2008 (non-final office action issued). Thus the correct “B delay” calculation should be 803 days.

Patentee also disagrees with the USPTO’s calculation regarding 21 days over overlap between A delay and B delay or between A delay and C Delay as indicated in PAIR. It is Patentee’s belief that no overlap exists during any of the USPTO delay periods.

2C Request for “C Delay” Adjustment under §1.702(e)

The present application was successfully appealed to the Board of Patent Appeals and Interferences and Applicant requests that the days of this excluded period be added to the patent term adjustment (“C delay”), pursuant to 37 C.F.R. §1.702(e). Applicant requests a patent term adjustment of 23 days for the period from the filing of the notice of appeal on 3/20/2007 to the date of the pre-appeal panel decision on 4/11/2007.

2D Other Circumstances

As required under 37 C.F.R. §1.705(b)(iii) and (iv)(B), Applicants confirm that, (1) this application is not subject to a Terminal Disclaimer; and (2) except for the Applicants’ delay periods set forth above and noted in the PAIR calculation, there were no other circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

Conclusion

For the reasons set forth above, Applicants request that the patent term adjustment for the present patent application be corrected to 1270 days (330 days A&C delay + 137 days for late issuance of patent + 803 days B Delay).

Application Serial Number: 10/664,575
Docket No: DEP5150USCIP1

Respectfully submitted,

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